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EXAMINER

BAYARD, DJENANE M

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/728,442

Applicant(s)

LEMLER ET AL.

Examiner

Djenane M Bayard

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,4,6,9, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,459,682 to Ellessen et al.

- a. As per claims 1, 6, 11 Ellessen et al teaches monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of: creating a schema that provides a set of rules for defining service level agreements (See col.2, lines 58-60); receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See col. 6, lines 3-10); and verifying that the information defining said particular service level agreement conforms to the set of rules in said schema ( See col. 3 lines 66-67 and col. 4, lines 1-2).

b. As per claims 4, 9, Ellesson et al teaches the steps of: generating, at a server, interface data for defining service level agreements; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider (See col. 7, lines 57-64).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 5,7, 12, 14-15, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Ellesson et al in view of U.S. Patent No. 6,701,342 to Bartz et al.

a. As per claims 2 and 7, Ellesson et al teaches the claimed invention as described above. However, Ellesson et al fails to teach wherein if said information defining said particular service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered.

Bartz et al teaches distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests (See col. 4, lines 48-67); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 3, lines 34-35 and col. 13, lines 58-59)

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate to incorporate then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered as taught by Bartz et al in the claimed invention of Ellesson et al in order to generate SLA reports that provide information relating to SLA compliance evaluations (See col. 2, lines 36-37).

b. As per claim 5, Ellesson et al teaches the claimed invention as described above. However, Ellesson et al fails to teach the steps of verifying that the network includes one or more devices that may be configured to perform the one or more tests.

Bartz et al teaches one or more devices that may be configured to perform the one or more tests (See col. 4, lines 45-55).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate one or more devices that may be configured to perform the one or more

tests as taught by Bartz et al in the claimed invention of Ellesson et al in order to collect measurement data from various resources (See col. 4, lines 30-31).

c. As per claim 12,15 and 21, Ellesson et al teaches a method for monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of receiving information defining the service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See col. 6, lines 3-10); However, Ellesson et al fails to teach distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered.

Bartz et al teaches distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests (See col. 4, lines 48-6); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 3, lines 34-35 and col. 13, lines 58-59).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing

reporting information that indicates whether the customer is receiving the level of service that has been offered as taught by Bartz et al in the claimed invention of Elleson et al in order to generate SLA reports that provide information relating to SLA compliance evaluations (See col. 2, lines 36-37).

d. As per claims 14 and 17, Elleson et al teaches the steps of: generating, at a server, interface data for defining service level agreements; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider (See col. 7, lines 57-64).

5. Claims 3, 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Elleson et al in view of U.S. Patent Application Publication NO. 202/0049815 to Dattatri et al.

a. As per claims 3,8, Elleson et al teaches the claimed invention as described above. However, Elleson et al fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However, Elleson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in order to provide tracking and monitoring (See page 1, paragraph [0008]).

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Ellesson et al in view of U.S. Patent No. 6,466,984 to Naveh et al.

a. As per claim 10, Ellesson et al teaches a computer-readable medium accessible by the processor and comprising one or more sequences of instructions which, when executed by the processor, cause the processor to carry out the steps of creating a schema that provides a set of rules for defining service level agreements (See col.2, lines 58-60); receiving information defining a. particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See col. 6, lines 3-10); and verifying that the information defining said particular service level agreement conforms to the set of rules in said schema ( See col. 3 lines 66-67 and col. 4, lines 1-2).

Naveh et al teaches a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface (See col. Col. 17, lines 11-15); a processor coupled to the network interface and receiving information from the network interface (See col. 17, line 51).



It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface as taught by Naveh et al in the claimed invention of Ellesson et al in order to integrate application into a policy based networking system (See col. 5, lines 14-15).

7. Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Ellesson et al in view of U.S. Patent No. 6,701,342 to Bartz et al. as applied to claim 12 above, and further in view of U.S. Patent Application Publication NO. 202/0049815 to Dattatri et al.

a. As per claims 13 and 16, Ellesson et al in view of Bartz et al teaches the claimed invention as described above. Furthermore, Ellesson et al fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as

taught by Ellesson et al in view of Bartz et al in order to provide tracking and monitoring (See page 1, paragraph [0008].

8. Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 Ellesson et al in view of U.S. Patent No. 6,701,342 to Bartz et al and further in view of U.S. Patent No. 6,466,984 to Naveh et al.

a. As per claim 18, Ellesson et al teaches a computer-readable medium accessible by the processor and comprising one or more sequences of instructions which, when executed by the processor, cause the processor to carry out the steps of: receiving, information defining the service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See col. 6, lines 3-10); However, Ellesson et al fails to teach distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered and a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface;

Bartz et al teaches distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result

information based on the devices performing the one or more tests (See col. 4, lines 48-6); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 3, lines 34-35 and col. 13, lines 58-59).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered as taught by Bartz et al in the claimed invention of Ellesson et al in order to generate SLA reports that provide information relating to SLA compliance evaluations (See col. 2, lines 36-37).

Naveh et al teaches a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface (See col. Col. 17, lines 11-15); a processor coupled to the network interface and receiving information from the network interface (See col. 17, line 51).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface as taught by Naveh et al in the claimed

invention of Ellesson et al in view of Bartz et al in order to integrate application into a policy based networking system (See col. 5, lines 14-15).

20. As per claim 20, Ellesson et al teaches the steps of: generating, at a server, interface data for defining service level agreements; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider (See col. 7, lines 57-64).

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 Ellesson et al in view of U.S. Patent No. 6,701,342 to Bartz et al, further in view of U.S. Patent No. 6,466,984 to Naveh et al as applied to claim 18 above, and further in view of U.S. Patent Application Publication No. 2002/0049815 to Dattatri.

a. As per claim 19, Ellesson et al in view of Bartz et al and further in view of Naveh et al teaches the claimed invention as described above. Furthermore, Ellesson et al fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012].

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al and further in view of Naveh et al in order to provide tracking and monitoring (See page 1, paragraph [0008].

10. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,701,342 to Bartz et al in view of U.S. Patent No. 6,701,345 to Carley et al.

a. As per claim 22, Bartz et al teaches a method for monitoring a level of service that is being provided to a customer by a service provider, the method comprising the computer-implemented steps of: storing information that defines the level of service that has been guaranteed to a customer by a service provider (See col. 13, lines 45-51). However, Bartz et al fails to teach receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service that has been guaranteed by the service provider; and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer by the service provider.

Carley et al teaches teach receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service (See col. 64, lines 8-11); and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of

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tests for measuring the level of service that is being provided to the customer (See col. 102, lines 5-7).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate teach receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service; and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer as taught by Carley et al in the claimed invention of Bartz et al in order to ensure integrity, quality and consistency (See col. 18, lines 15-17).

b. As per claim 23, Ellesson et al in view of Carley et al teaches the claimed invention as described above. However, Ellesson et al teaches wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider.

Carley et al teaches wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider (See col. 37, lines 7-15).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider as taught by Carley et al in the claimed invention of Ellesson et al in order to ensure integrity, quality and consistency (See col. 18, lines 15-17).

11. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Ellesson et al in view of U.S. Patent No. 5,893,905 to Main et al.

a. As per claim 24, Ellesson et al teaches a method for monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of: receiving a service level agreement definition that defines one or more tests for monitoring the level of service that is being provided to the customer (See col. 6, lines 3-10); However, Ellesson et al fails to teach receiving a service level contract definition that defines apply times for performing the one or more tests ; and verifying that the service level agreement definition and the service level contract definition conform with the level of service that has been offered to the customer by the service provider.

Main et al teaches receiving a service level contract definition that defines apply times for performing the one or more tests (See col. 4, lines 50-53); and verifying that the service level agreement definition and the service level contract definition conform with the level of service that has been offered to the customer by the service provider (See col. 4, lines 59-63).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate receiving a service level contract definition that defines apply times for performing the one or more tests; and verifying that the service level agreement definition and the service level contract definition conform with the level of service that has been offered to the customer by the service provider as taught by Main et al in order to monitor performance and

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compare actual performance against a Service Level Agreement to which each monitored jobs belongs (See col. 3, lines 30-33).

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

U.S. Patent Application No. 2003/0187966 to Sinha teaches a method and apparatus for service level agreement formation and management.

U.S. Patent Application No. 6,304,892 to Bhoj et al teaches a management system for selective data exchanges across federated environments.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M Bayard whose telephone number is (703) 305-6606. The examiner can normally be reached on 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Djenane Bayard

  
**RUPAL DHARIA**  
SUPERVISOR EXAMINER